

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

THOMAS K. LOCKHART, JR. and DAWN W. FORD,

Plaintiffs/Cross-Defendants,

v.

HOME-GROWN INDUSTRIES OF GEORGIA, INC. d/b/a/ MELLOW MUSHROOM,

Defendant/Cross-Plaintiff,

Case No. 3:07-CV-239

PERMANENT INJUNCTION

THIS CAUSE having come before the Court on agreement of the parties, it is **HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. For a period of two (2) years commencing as of the entry of this Permanent Injunction, Plaintiffs and Counter-defendants, Thomas K. Lockhart (“Lockhart”) and Dawn F. Ford (“Ford”), their affiliates, subsidiaries, officers, agents, servants and employees, and those persons acting in active concert or participation with them, or under their control, shall not have any direct or indirect interest (e.g., through a spouse or child) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent, in any restaurant or food service business that (i) features pizza as a menu item, and (ii) is located at the site of Plaintiffs’ former Mellow Mushroom Restaurants (4100 Carmel Road, Suite A, Charlotte, North Carolina; 4422 Colwick Road, Charlotte, North Carolina; and 3228 North Davidson Street, Charlotte, North Carolina), within two (2) miles of those Restaurant sites, or within five (5) miles of any of the Mellow Mushroom Restaurants set forth in the list annexed hereto as Exhibit 1.

2. Lockhart and Ford, their affiliates, subsidiaries, officers, agents, servants and employees, and those persons acting in active concert or participation with them, or under their control, are permanently enjoined from:

- a. Using Mellow Mushroom's trade names, services marks, trademarks and related intellectual property (the "Mellow Mushroom Marks") or any trademark, service mark, logo, trade name, name or word that is confusingly similar to the Mellow Mushroom Marks;
- b. Otherwise infringing the Mellow Mushroom Marks or using any similar designation, alone or in combination with any other components;
- c. Passing off any of their goods or services as those of Mellow Mushroom or its authorized franchisees;
- d. Causing likelihood of confusion or misunderstanding as to the source or sponsorship of their business, products or services; and
- e. Causing likelihood of confusion or misunderstanding as to their affiliation, connection or association with Mellow Mushroom and its franchisees or any of Mellow Mushroom goods or services.

3. Lockhart and Ford shall promptly eliminate any advertising under the Mellow Mushroom Marks or any other confusingly similar designations from all media including, but not limited to, newspapers, flyers, coupons, promotions, signs, telephone books, telephone directory assistance listings and mass mailings, all at Plaintiffs' cost.

4. With ten (10) days of the entry of this Permanent Injunction, Lockhart and Ford shall eliminate from all advertisements and marketing materials (including menus, signage, artwork, logos, and decorations) used in connection with the operation of their former Mellow Mushroom Restaurants anything that states, conveys, suggests or implies that those Restaurants continue to serve pizza.

5. All labels, signs, prints, packages, wrappers, receptacles, uniforms, logo items, and advertisements in the possession of Lockhart and Ford, their affiliates, subsidiaries, officers, agents, servants and employees, and those people in active concert or participation with them bearing the Mellow Mushroom Marks, and all plates, molds, and other means of making the same, if any, shall be promptly delivered to Mellow Mushroom at Plaintiffs' cost.

6. With ten (10) days of the entry of this Permanent Injunction, Lockhart and Ford shall:

- a. Return to Mellow Mushroom all copies of all Operating Manuals provided to Lockhart and Ford in connection with the operation of the former Mellow Mushroom Restaurants;
- b. Assign to Mellow Mushroom any telephone numbers used in connection with the operation of their former Mellow Mushroom Restaurants, including telephone numbers (704) 341-8236, (704) 362-5335, and (704) 377-2422. Lockhart and Ford shall take any and all necessary steps, and execute whatever documents may be reasonably necessary, to effectuate the assignment of the telephone numbers.

7. Judgment is entered in favor of Mellow Mushroom and against Lockhart and Ford, jointly and severally, in the amount of \$2,500.00. Lockhart and Ford shall pay Mellow Mushroom the foregoing \$2,500.00 no later than ten (10) days after the entry of this Permanent Injunction.

8. This matter is dismissed with prejudice. Each party shall bear its own costs and attorneys' fees.

IT IS SO ORDERED.

Signed: October 22, 2007

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

